

PUBLIC INTEREST; REQUEST FOR WAIVER

Mobile Relay Associates (“MRA”, or “Applicant”), hereby requests waiver of Sections 2.106 and 90.35 of the Commission’s Rules, and of such other Commission rules as the Commission may deem necessary or appropriate, in order to be licensed with station class FB8 *but only a 4 kHz emission designator* on the frequency pairs 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz (collectively, the “Requested Channels”) in the Los Angeles, San Diego and Las Vegas metropolitan areas, as a PMRS Industrial/Business (“I/B”) licensee. A waiver is required here because the involved channel pairs are not included within the specific frequencies allocated under section 90.35 to the I/B service.

I. SPECTRUM REQUESTED

With the 4 kHz emission designator requested herein, the edges of MRA’s occupied bandwidth on the Requested Channels would be: as to 454.009375 MHz, 454.007375 MHz (lower) and 454.011375 MHz (upper); as to 454.990625 MHz, 454.988625 MHz (lower) and 454.992625 MHz (upper); as to 454.996875 MHz, 454.994875 MHz (lower) and 454.998875 MHz (upper); as to 459.009375 MHz, 459.007375 MHz (lower) and 459.011375 MHz (upper); as to 459.990625 MHz, 459.998625 MHz (lower) and 459.992625 MHz (upper); and as to 459.996875 MHz, 459.994875 MHz (lower) and 459.998875 MHz (upper).

II. CURRENT ALLOCATIONS

Although not allocated to I/B, neither are the Requested Channels allocated to any other Commission service. Rather, they are fallow “guardband” channels, serving as a sort of buffer between various Part 90 and Part 22 allocations. Following are two charts, one each for the 454 MHz channels and the 459 MHz channels, illustrating in a pictorial manner the absence of spectral overlap.

III. RATIONALE FOR THIS WAIVER

A. With Narrowbanding, There Is No Longer Any Spectral Overlap

At the time the Commission created most of its allocations in this portion of the spectrum (or, at least those allocations which are other than Part 90), wideband channel operation (of at

least 20 kHz occupied bandwidth) was the norm and even so-called “narrowband” operation (not yet mandated), was with 11 kHz occupied bandwidth. However, in the intervening years, there have been great strides in the evolution of narrowbanding; strides reflected in the new Part 90 rules but not yet reflected in assessing where and how much of a buffer between separate radio services is required or appropriate. The Commission has now permitted separate Part 90 licensees to be licensed closer together than before, without any fear of harmful interference because with the new narrowbanding, there is no spectral overlap between adjacent licensees.

For the exact same reason – that there is no longer any spectral overlap between adjacent licensees – the Requested Channels can now be licensed as 4 kHz occupied-bandwidth channels for I/B usage without causing any harmful interference whatsoever to users of other land mobile services.

B. There Is Widespread Part 90 PMRS Congestion in Los Angeles and San Diego

Even as narrowbanding means that the Requested Channels are no longer needed as buffers, there is a critical shortage of Part 90 PMRS spectrum in metropolitan Los Angeles¹ and San Diego. Los Angeles is the nation’s most congested land mobile geographic area, by far. There are no remaining unlicensed Part 90 I/B channels. The same is true in San Diego, which is a major metropolitan area in its own right, is directly adjacent to Los Angeles, and is also on the Mexican border, which reduces the number of available channels. In response to the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (“Spectrum Act”), which calls for the eventual migration of Public Safety (but not I/B) out of the T-Band, the Commission has imposed an indefinite filing freeze on new I/B T-Band applications. *See* Public Notice, DA 12-643, released April 26, 2012 (“*T-Band Freeze PN*”). This freeze came at a time when there already was virtually no unused Part 90 I/B spectrum in metropolitan Los Angeles, and not long after MRA and other PMRS licensees had been forced off of much of the 800 MHz SMR spectrum.²

¹ MRA needs to have the same channels in Las Vegas as it has in Los Angeles, because a number of MRA’s customers operate as far afield as Las Vegas and need to have contact with their dispatchers when their vehicles are roaming in Las Vegas. Accordingly, all arguments made in support of being licensed in Los Angeles apply with equal force to Las Vegas.

² T-Band spectrum is not allocated to San Diego or Las Vegas at all, so that spectrum could never be a solution in either of those markets.

This freeze also came at a time when Motorola in particular, but also other manufacturers, began heavily marketing digital data equipment to operators of fleet-dispatch systems – equipment which is almost invariably being programmed to operate on a continuous basis and almost invariably installed by taxicab and similar fleet operators on shared spectrum, thereby blasting all co-channel licensees of the channel in violation of the Commission’s rules with respect to shared spectrum. (*See, e.g.*, Section 90.403(e) of the Commission’s Rules, which requires licensees of shared spectrum to monitor the channel for transmissions of co-channel licensees and to refrain from transmitting on top of such co-channel transmissions.)

These widespread instances of digital data operators usurping exclusive use of shared channels have resulted in MRA and its customers being thrown off many of MRA’s licensed channels. Although MRA has complained mightily to the Commission’s Los Angeles District Office about these intentional and continuing violations of Section 90.403(e) and other Commission rules, and although the District Office has cited numerous of these violators, Commission policy is simply to cite these violators, not to shut them down when they refuse to cease their violations. As a result, the usurpation of these ostensibly shared channels continues to grow. Concomitantly, MRA and its customers, whose needs are growing, have less and less usable spectrum.³

IV. There Is No Chance of Harm to Adjacent Part 22 Operations

To repeat, there is no chance of harm to adjacent (but not overlapping) Part 22 operations on Part 22 channel pair 454/459.0250 MHz. This is auctioned spectrum. As auctioned spectrum, the license does not identify the involved spectrum via its centerpoint, but by the upper and lower boundaries of the licensed spectrum – in this case, with lower boundaries of

³ One recent, illustrative example is the loss of the use of channel pair 451/456.60000 MHz by MRA’s customer, Tidelands Oil, licensed under call sign WPBB884. Recently the licensee of call sign WQJM334, Public Safety Technologies, Inc. (which, despite its name, is an I/B licensee), operating on 451/456.0000 in Los Angeles, replaced its equipment with new equipment which transmits continuously without monitoring. This licensee has blasted Tidelands off the shared channel. MRA is currently pursuing that matter as well, and MRA/Tidelands may soon be filing with the FCC seeking remedies. To repeat, this loss of the 451/456.60000 MHz spectrum *is just one of many examples MRA could cite.*

454/459.0125 MHz. Thus, the lower boundary of the Part 22 spectrum is still 0.001125 MHz (*i.e.*, 1- kHz) separated from MRA's requested 454/459.009375 MHz channel pair herein.⁴

CONCLUSION

In summary, thanks to the availability of very-narrowband 4 kHz equipment in this band, the Commission can now issue licenses to MRA for the Requested Channels without causing any interference or other problems for any incumbent Commission-regulated operations, whether in Part 90 or other rule parts. The Los Angeles metropolitan area, where MRA is proposing to operate using the Requested Channels, is the nation's most congested PMRS geographic areas, with virtually no PMRS spectrum left available.

Due to actions taken by the Commission -- including, among others, the decision to freeze not only Public Safety but also Industrial/Business applications for T-Band spectrum and the decision not to expend Commission resources to physically shut down those operating unlawfully in Part 90 spectrum (in contrast to Commission policy regarding, for example, broadcast spectrum) -- MRA and its customers have lost the use of significant portions of MRA's licensed spectrum and have no access to alternative spectrum. The Requested Channels are the spectrum that is available to MRA in this area, is not already in use, and can be put to use easily without harming anyone else.

Accordingly, the Commission should grant the limited rule waiver which MRA seeks herein, and issue MRA licenses to use the Requested Channels at the specified locations in the I/B service, with station classes FB8/MO8.

⁴ As it so happens, in the Los Angeles metropolitan area, this Part 22 spectrum is licensed to MRA (which was the high bidder at the FCC's auction) under call sign WPVE956, and is operated by MRA as non-interconnected PMRS spectrum. MRA, as the involved Part 22 licensee, consents to itself being licensed as requested herein.